

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.430 OF 2002

Shri.Bhagwan P.Bhoge]
4216, Kasturi Bhavan]
Panchavati, Nasik]
422 003.]..Petitioner

Vs.

1. State of Maharashtra]
through Commissioner]
of Police, Nasik City]
Nasik.]
2. Shri.Prakash Pawar,]
Commissioner of Police,]
Nasik City, Nasik]
3. Shri.Vikram N.Deshmane]
Assistant Commissioner]
of Police and Special]
Executive Magistrate]
Nasik City, Division(I)]
Nasik.]
4. Mandaleshwar Kale,]
Senior Police Inspector]
Panchavati Police St.]
Nasik]
5. Shri.Gaikwad]
Junior Police Inspector]
Panchavati Police St.]
Nasik]..Respondents

Mr.Mahesh M.Thorat Advocate for Petitioner
Mr.P.S.Hingorani APP for Respondents

CORAM: R.M.S.KHANDEPARKAR, AND
SMT.V.K.TAHILRAMANI, JJ.

DATE OF RESERVING JUDGMENT: 26.09.2007
DATE OF PRONOUNCING JUDGMENT:12.10.2007

ORAL JUDGMENT [PER SMT.V.K.TAHILRAMANI, J.] :

1. Heard the learned advocate for the Petitioner and the learned APP for the Respondents.

2. Chapter Proceedings No. 54 of 2002 were initiated against the Petitioner under Section 110(g) of Criminal Procedure Code. In the said Chapter Proceedings, show cause notice came to be issued to the Petitioner. Thereafter, interim bond came to be obtained from the Petitioner under Section 116(3) of Cr.P.C. The Petitioner is seeking quashing of the show cause notice as well as the order directing him to furnish interim bond.

3. The learned advocate for the Petitioner has submitted that there was dispute between the Petitioner and one Balu Chabeelal Patil and said Balu Chabeelal Patil lodged false complaint against the Petitioner at Panchavati Police Station, Nasik. About 23 persons came to be arrested in the said case. Thereafter chapter proceedings were initiated against the Petitioner and others under Section 110(g) of Cr.P.C. The Petitioner was served with show cause notice. It is the case of the Petitioner that Respondent No.3 Special

Executive Magistrate, City Division-1, who had issued show cause notice, called upon the Petitioner to furnish interim bond and directed the Petitioner to furnish two sureties of reputed persons from social institutions who are capable of keeping control over the Petitioner for the release of the Petitioner from the custody towards interim surety. The learned Advocate for the Petitioner submitted that this was done without issuing any show cause notice and without starting any inquiry in the said matter. The learned advocate for the Petitioner has submitted that without any enquiry the learned Special Executive Magistrate on 28.2.2002 directed the Petitioner under Section 116(3) of Cr.P.C. to furnish interim bond and surety. The Petitioner managed to furnish one surety and bond but the said surety was not accepted by the learned Magistrate and the Petitioner came to be sent into magisterial custody till 7.3.2002. On 2.3.2007, the petitioner furnished surety and hence, he came to be released on bail.

4. The grievance of the Petitioner is that the

Respondent Executive Magistrate without conducting any enquiry directed the Petitioner to furnish interim bond and sureties. It is further submitted that this was done without issuing any show cause notice to the Petitioner and without starting any inquiry at all. Thus, the Petitioner has sought quashing of show cause notice as well as the order directing him to furnish interim bond. The Petitioner has also sought for costs and compensation for wrongful arrest and detention.

5. It is an admitted fact that the Petitioner was involved in a number of cases. Proceedings under Chapter VIII of Cr.P.C. which also cover Sections 110 and 116(3) of Cr.P.C. are not punitive provisions but they are preventive in nature. In the present case, record shows that show cause notice under Section 110 of Cr.P.C. was indeed served upon the Petitioner on 28.2.2002. The said show cause notice was to the effect as to why the Petitioner should not be asked to execute a bond for keeping good behaviour for a period of one year. The Petitioner was also directed under Section 116(3) of Cr.P.C. to execute interim bond

of Rs.15,000/- with two sureties in the like amount for maintaining good behaviour until the enquiry in the said chapter proceedings was concluded. Since the Petitioner could not furnish the sureties as directed, the Petitioner was remanded to judicial custody till 7.3.2002. It is an admitted fact that the said order was passed after hearing the Petitioner as well as his advocate who was present during the proceedings. In fact, on 2.3.2002 the Petitioner has furnished sureties as well as bond, hence, he came to be released from custody.

6. After perusing the record pertaining to this case, we find that all the steps have been taken in accordance with law. The proceedings in the case are under Section 110(g) of Cr.P.C. The show cause notice has been issued in accordance with the provisions of Section 111 of Cr.P.C. As far as the interim bond is concerned, the said bond has been annexed to the petition. On perusal of the same, it is seen that the show cause notice was read over and explained to the petitioner. The Executive Magistrate had perused the proposal and record in the case. It is specifically stated in the order under Section 116(3) of Cr.P.C. that after going

through the record and in the inquiry which came to be conducted, the learned Magistrate came to the conclusion that the acts of the Petitioner were such as to cause breach of peace and law and order. Hence, to prevent the Petitioner from committing such acts and to maintain the same, it was necessary to obtain an interim bond. A perusal of the interim bond clearly shows that enquiry had commenced. Moreover, it is an admitted fact that Petitioner as well as his advocate were present during the proceedings. Advocate for the Petitioner was heard and only thereafter the interim bond came to be taken.

7. The learned advocate for the Petitioner has placed reliance on the decision of the Supreme Court in the case of **Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and others** reported in **AIR 1971 S.C. 2486**. He has placed reliance on the observations in the said judgment wherein it is observed that "if the Magistrate makes no efforts to enquire into the truth of the allegations and adjourns the case from day to day and yet asked for interim bond and places him in custody for default, the proceedings would be

entirely one sided". However, in the present case as observed by us the enquiry has commenced before the bond was taken. The Magistrate had looked into the entire record and only when he was satisfied that it was necessary to do so, the Magistrate directed the Petitioner to furnish interim bond. In the case of **Madhu Limaye (supra)**, it is also observed that "it is pending the completion of the inquiry that an interim bond can be asked for if immediate measures are necessary and in default to put the person in custody". In the present case, this requirement has clearly been followed. Hence, this decision would be of no help to the Petitioner.

8. Thereafter reliance was placed on the decision of the Full Bench of the Orissa High Court in the case of **Sona Khan and others Vs. State reported in 1981 Cri.L.J. 39**. Reliance was placed on the observations therein that some inquiry has to be made before the bond can be ordered. He further placed reliance on the observations in the said judgment, wherein it is observed that "there is no scope for the proposition that without commencement of inquiry, an order for interim bond can be made.

Inquiry does not commence as soon as the delinquent appears and the notice under Section 112 is read out to him." However, in the present case, it is seen that not only did the Petitioner appear before the Magistrate and the notice was read over to the Petitioner, but the Magistrate had perused the record produced before him and had commenced the inquiry, and thereafter the Magistrate directed the Petitioner to furnish the interim bond, hence, this decision would be of no help to the Petitioner.

9. Reliance is also placed by the learned Advocate for the Petitioner on the decision in the case of **Rajesh Suryabhan Nayak and others Vs. State of Maharashtra and ors. reported in 2006(2) Bom.C.R. (Cri.) 199 of Full Bench.** In the said case, the chapter proceedings came to be quashed by the Court. However, we find that facts therein are very different from the facts in the present case and hence, the said decision would have no application to the facts of the present case. In the said case, it is observed that "interim orders under Section 116 of Cr.P.C. can be passed only after there is information of a nature which convinces the Magistrate that there is likelihood

of breach of peace. Such orders under Section 116 in emergent cases, cannot be passed unless Magistrate records reasons in writing as to why he wants to take emergent action." In the present case, we find that there was information of such a nature which was sufficient to convince the Magistrate that there is likelihood of breach of peace. Moreover, the Magistrate has recorded his reasons in writing as to why the Petitioner was being directed to furnish interim bond. In the case of **Rajesh Nayak (supra)**, the show cause notice came to be quashed for many reasons, the main one being that the records show that orders were passed on printed forms leaving blanks to be filled in later. The facts in the case of **Rajesh Nayak (supra)**, show that in the printed form only some blanks were filled and some remained to be filled in. The way orders were passed leaving certain blanks so as to fill the blanks/gaps later, indicated that the orders were passed without application of mind. Hence, in such case, the order came to be quashed. In the present case, both orders are written in detail by the Magistrate. There is no question of any printed forms in the present case. Hence, this decision

would have no application.

10. Reliance is also placed on the decision in the case of **Surendra Ramchandra Taori Vs. State of Maharashtra and others reported in 2001 (4) Mh.L.J. 601**, wherein it was directed that "sum of Rs.15,000/- be paid to the petitioner as well as costs of Rs.5000/-". On perusal of the said decision, we find that facts therein are very different from the present case and in the said case the Petitioner was mercilessly beaten and and tortured in the Police Station and hence, compensation came to be awarded. In the present case, there is no whisper of any allegation that there was any torture or beating or even the slightest assault on the Petitioner in the police station while the proceedings were going on. Hence, this decision would have no application to the facts in the present case. In such case, no case is made out for compensation.

11. In the result, the writ petition fails and the same is dismissed. Rule is discharged. No order as to costs.

[R.M.S.KHANDEPARKAR, J.]

[SMT.V.K.TAHILRAMANI, J.]